

Kishore C. Acharya

S/N: 09/682,430

REMARKS

Claims 1-36 are pending in the present application. In the Office Action mailed September 27, 2004, the Examiner rejected claims 1-36 under 35 U.S.C. §102(e) as being anticipated by Jaszcak et al. (USP 6,629,469).

Jaszcak et al. was filed on June 5, 2001, and claims the benefit of provisional application number 60/209,520, filed on June 5, 2000. An affidavit under 37 C.F.R. §1.131 may be used "[t]o antedate a reference that qualifies as prior art under 35 U.S.C. 102(e), where the reference has a prior art date under 35 U.S.C. 102(e) prior to applicant's effective filing date, and show but does not claim the same patentable invention." MPEP §715. However, "[s]hould it be established that the portion of the patent, or patent application publication, disclosure relied on as the reference was introduced into the patent application by amendment and as such was new matter, the date to be overcome by the affidavit or declaration is the date of amendment." Id. Thus, in order to determine the effective date that must be overcome under 37 C.F.R. §1.131, it must be determined whether Jaszcak et al. introduced new matter at the time of filing of the non-provisional application.

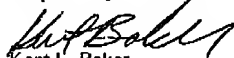
Therefore, while Applicant believes there are a number of distinctions between the claimed invention and that disclosed by Jaszcak et al., Applicant, nevertheless, hereby requests and is entitled to a copy of the provisional application to which Jaszcak et al. claims the benefit. Only from a review of the provisional application can a determination be made as to whether Jaszcak et al. introduced new matter at the time of filing the non-provisional application and was, in fact, in entitled to the benefit of the filing date of the provisional application for that disclosure relied on by the Examiner. Furthermore, Applicant requests that the copy of the provisional application be included in a non-final Office Action.

Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

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Respectfully submitted,


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